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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	400004-2018	8674

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EXAMINER

CHIN, PAUL T

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/937,952

Applicant(s)

KALISCH ET AL.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### DETAILED ACTION

1. Applicant's amendment filed June 25, 2003, and the arguments presented therewith have been fully considered and they are persuasive in view of the amendment. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Plotka (1,252,226) and Breckenridge (885,580). A non-final office action follows below.

#### *Drawings*

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 25, 2003, have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

#### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the claimed limitation "*a pair of gripper elements*" (claim 11, lines 1-2) is not clearly understood as to whether applicant is referring to the aforementioned "gripper elements" (claim 9, line 6) or is claiming an additional "a pair of gripper elements". Moreover, there is antecedent basis for "*the lateral edges*" (claim 13, line 2).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-11 and 13-15, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Plotka (1,252,226)** (see Paper No. 8) or **Breckenridge (885,580)** (see Paper No. 8).

Plotka (1,252,226) shows a gripper mechanism and a method having finger-like gripper elements (17,18) (see Fig. 4-6) that are arranged in a comb-like manner and the grippers are moved to grip (from inside) a series of containers in a longitudinal direction.

Breckenridge (885,580) also shows a gripper mechanism and a method having finger-like gripper elements (c,c,c) (see Fig. 1 and 2) that are arranged in a comb-like manner and the grippers are moved to grip (from inside) a series of containers (see Fig. 4) in a longitudinal direction.

Plotka (1,252,226) or Breckenridge (885,580) does not show that *the intended use of the gripper is to grip a plurality of sealed rectangular pouches*.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide *a plurality of sealed rectangular pouches* or other hollow containers on the Plotka's gripper mechanism (1,252,226) or Breckenridge's gripper mechanism (885,580) to grip with its gripper elements.

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Re claim 10, Plotka's gripper mechanism (1,252,226) or Breckenridge's gripper mechanism (885,580) does show a row of at least five containers is simultaneously gripped.

Re claim 11, Plotka's gripper mechanism (1,252,226), as best understood, shows that each container can be picked up by a movable handle (4) and Breckenridge's gripper mechanism (885,580), as best understood, also shows that each container can be picked up by one of the movable elements (17) (see Fig. 6).

Re claims 13 and 14, it appears that Plotka's gripper mechanism (1,252,226) or Breckenridge's gripper mechanism (885,580) would be capable of gripping the pouches by an angle of less than 60 degree wherein the main plane is substantially vertical.

Re claim 15, Plotka's gripper mechanism (1,252,226) or Breckenridge's gripper mechanism (885,580) shows a longitudinal side, on which each container stands, has a horizontal orientation.

*Allowable Subject Matter*

7. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

8. Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

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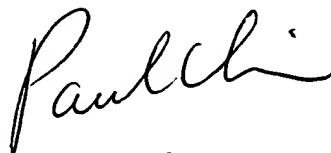
*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gerwe (5,860,270) and Radzins et al. (5,176,244) shows a pusher rods to insert inside of a plurality of containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.



PAUL T. CHIN  
Examiner  
Art Unit 3652

PTC  
September 22, 2003